FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 471—In Bankruptcy.

BANKERS TRUST COMPANY, *et al.*,

Appellants,

vs.

RECONSTRUCTION FINANCE CORPORATION, L. W. BALDWIN and GUY A. THOMPSON, Trustees of MISSOURI PACIFIC RAILROAD COMPANY, UNITED STATES OF AMERICA, *et al.*,

Appellees.

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vs.

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ON CERTIORARI FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH JUDICIAL CIRCUIT.

STATEMENT OF GUARANTY TRUST COMPANY OF NEW YORK AND BENJAMIN F. EDWARDS, AS TRUSTEES UNDER THE FIRST AND REFUNDING MORTGAGE OF MISSOURI PACIFIC RAILROAD COMPANY.

EDWIN S. S. SUNDERLAND,
Counsel for Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company.

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INDEX.

PAGE

INTRODUCTORY 2

STATEMENT 3

Statute Cited.

Public Resolution No. 10, 73d Congress..... 3

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Introductory.

Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company (hereinafter called the First and Refunding Mortgage Trustees), are named as Appellees in this appeal solely by reason of the fact that they have intervened pursuant to leave first had and obtained of the District Court in the main proceedings under Section 77 of the Bankruptcy Act, as amended. The petition of the First and Refunding Mortgage Trustees, verified June 7, 1933 (R. 19, 38) upon which the order of the District Court granting leave to such Trustees to intervene (R. 39) was based, among other things alleges that $264,045,500 principal amount of First and Refunding Bonds are outstanding (R. 25), that certain defaults under the mortgage securing such bonds exist, and asks leave to intervene and that there be a segregation of income from the mortgaged premises for the benefit of such bondholders. Subsequently an order was entered on June 22, 1933 (R. 43), directing that the books of the Debtor be so kept as to show the income derived from the properties subject to the lien of the mortgage. This petition of the First and Refunding Mortgage Trustees contained no such allegation or prayer as is found in the petition of Bankers Trust Company asking for payment in gold, or its equivalent. The answers filed to the petition of the First and Refunding Mortgage Trustees consequently raise no such question as did the answers filed by the Trustees of the Debtor and by Reconstruction Finance Corporation to the petition of Bankers Trust Company. For this reason the First and Refunding Mortgage Trustees took no part in the proceedings had upon the petition filed by Bankers Trust Company in the District Court.

Inasmuch, however, as they are named as parties to this appeal, the First and Refunding Mortgage Trustees feel it incumbent upon them briefly to state their position on the fundamental question raised by the appeal.

Statement.

While the provisions of the First and Refunding Mortgage are not in the record before the Court, the First and Refunding Mortgage Trustees are advised and believe that no distinction of substance could be made between the gold clause contained in the First and Refunding Mortgage and that contained in the St. Louis, Iron Mountain & Southern River and Gulf Divisions First Mortgage, relied upon by the appellant, Bankers Trust Company.

The First and Refunding Mortgage Trustees, through their counsel, have made a detailed and exhaustive study of the questions presented on the appeal. They believe the issues involved will have been so fully and ably presented by the appellant on the one hand and the Government, the Reconstruction Finance Corporation and the Trustees of the Debtor on the other hand, that for them, as nominal parties, to burden this Court with a repetition of arguments and citations would be a work of supererogation.

However, as representatives of over a quarter of a billion dollars of funded debt of the Debtor, evidenced by bonds and secured by mortgage containing gold clauses substantially similar to those at issue here, the First and Refunding Mortgage Trustees are keenly sympathetic with the position taken by the Trustee of the Iron Mountain mortgage. Unless and until this Court shall uphold the constitutionality of Public Resolution No. 10 (Section 463, Title 31, U. S. C. passed June 5, 1933), the First and Refunding Mortgage Trustees conceive it to be their duty, as such trustees, to insist upon compliance with the exact terms and provisions of the First and Refunding Mortgage and upon enforcement of the provisions of the bonds issued thereunder according to their tenor and effect. These provisions are clear and unambiguous. They require that principal of and interest on the First and Refunding bonds be paid in United States gold coin of or equal to the standard of weight and fineness existing on the date of the issue of the bonds, or the equivalent thereof.

Holding these views, the First and Refunding Mortgage Trustees, on behalf of themselves as such Trustees and on behalf of the First and Refunding Mortgage bonds, place themselves in the hands of this distinguished Court, with full realization that this Court will have in mind the interests of such Trustees and the bondholders whom they represent.

Respectfully submitted,

EDWIN S. S. SUNDERLAND,
Counsel for Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company.